

Montana Water Court  
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Bozeman, MT 59771-1389  
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IN THE WATER COURT OF THE STATE OF MONTANA  
UPPER MISSOURI DIVISION  
DEARBORN RIVER BASIN (41U)  
PRELIMINARY DECREE

\* \* \* \* \*

CLAIMANT: William L. Musser Jr.

OBJECTOR: United States of America (Bureau of Land  
Management)

**CASE 41U-0122-R-2023**

41U 120733-00

41U 120760-00

41U 120761-00

**NOTICE OF FILING OF MASTER'S REPORT**

This Master's Report was filed with the Montana Water Court on the above-stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's findings of fact, conclusions of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must serve a copy of the objection to all parties on the service list found at the end of the Master's Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

## MASTER'S REPORT

### FINDINGS OF FACT

1. William L. Musser is the record owner of claims 41U 120733-00, 41U 120760-00, and 41U 120761-00.
2. Claims 41U 120760-00 and 41U 120761-00 were decreed with a notice-type issue remark.
3. The United States of America (Bureau of Land Management) objected to claims 41U 120733-00, 41U 120760-00, and 41U 120761-00.
4. The parties filed a Stipulation, resolving the Objections, on April 3, 2023. (Doc.<sup>1</sup> 3.00) Proposed abstracts and maps were attached to the Stipulation, reflecting the stipulated modifications.
5. Pursuant to the agreement of the parties, William L. Musser withdraws claim 41U 120733-00.
6. Pursuant to the agreement of the parties, claim 41U 120760-00 should be modified as follows:

**Point of Diversion and Means of Diversion:**

| <u>ID</u> | <u>Govt Lot</u> | <u>Qtr Sec</u> | <u>Sec</u> | <u>Twp</u> | <u>Rge</u> | <u>County</u>   |
|-----------|-----------------|----------------|------------|------------|------------|-----------------|
| 1         |                 | SWNE N2        | 32         | 18N        | 7W         | LEWIS AND CLARK |

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: LIVESTOCK DIRECT FROM SOURCE

**Place of Use:**

| <u>ID</u> | <u>Acres</u> | <u>Govt Lot</u> | <u>Qtr Sec</u> | <u>Sec</u> | <u>Twp</u> | <u>Rge</u> | <u>County</u>   |
|-----------|--------------|-----------------|----------------|------------|------------|------------|-----------------|
| 1         |              |                 | SWNE N2        | 32         | 18N        | 7W         | LEWIS AND CLARK |

7. Pursuant to the agreement of the parties, claim 41U 120761-00 should be modified as follows:

**Point of Diversion and Means of Diversion:**

| <u>ID</u> | <u>Govt Lot</u> | <u>Qtr Sec</u> | <u>Sec</u> | <u>Twp</u> | <u>Rge</u> | <u>County</u>   |
|-----------|-----------------|----------------|------------|------------|------------|-----------------|
| 1         |                 | SWSE S2        | 28         | 18N        | 7W         | LEWIS AND CLARK |

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: LIVESTOCK DIRECT FROM SOURCE

**Place of Use:**

| <u>ID</u> | <u>Acres</u> | <u>Govt Lot</u> | <u>Qtr Sec</u> | <u>Sec</u> | <u>Twp</u> | <u>Rge</u> | <u>County</u>   |
|-----------|--------------|-----------------|----------------|------------|------------|------------|-----------------|
| 1         |              |                 | SWSE S2        | 28         | 18N        | 7W         | LEWIS AND CLARK |

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<sup>1</sup> "Doc." numerical references correlate to case file docket numbers in the Water Court's Full Court case management system.

## CONCLUSIONS OF LAW

1. The Water Court is required to address all issue remarks decreed on a claim as well as any objections the claim receives. Sections 85-2-233, 85-2-247, and 85-2-248, MCA.

2. A properly filed Statement of Claim for an existing water right is prima facie proof of its content. Section 85-2-227, MCA. This prima facie validity may be overcome by evidence showing that one or more elements of the claim are incorrect. This standard of proof applies to objectors or claimants objecting to their own water right claims. Rule 19, W.R.Adj.R., *Nelson v. Brooks*, 2014 MT 120; 375 Mont.86, 95; 329 P.3d 558, 564.

3. The source remark decreed on claims 41U 120760-00 and 41U 120761-00 is a notice-type issue remark. As the Objections to the claims have been resolved, no further proceedings are required.

## RECOMMENDATIONS

1. Claim 41U 120733-00 should be dismissed.

2. Claims 41U 120760-00 and 41U 120761-00 should be modified as shown in Findings of Facts Nos. 6 and 7.

3. The issue remarks should be removed from claims 41U 120760-00 and 41U 120761-00.

Post Decree Abstracts of Water Right Claims are served with the Report for review.

## **ELECTRONICALLY SIGNED AND DATED BELOW.**

### **Electronic Service:**

Eve McDonald, Attorney  
US Dept of Justice-ENRD  
999 18<sup>th</sup> Street, South Terrace Suite 370  
Denver, CO 80202  
(303) 844-1381  
evelyn.mcdonald@usdoj.gov  
MontanaBasins.ENRD@USDOJ.GOV

### **Service via USPS Mail:**

William L. Musser Jr.  
49 E 86<sup>th</sup> St  
New York, NY 10028-1060

**POST DECREE  
ABSTRACT OF WATER RIGHT CLAIM  
DEARBORN RIVER  
BASIN 41U**

**Water Right Number:** 41U 120733-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** DISMISSED

**Owners:** WILLIAM L MUSSER JR  
49 E 86TH ST  
NEW YORK, NY 10028 1060

**Priority Date:**

**Type of Historical Right:**

**Purpose (use):** IRRIGATION

**Flow Rate:**

**Volume:**

**Source Name:** UNNAMED TRIBUTARY OF DEARBORN RIVER

**Source Type:** SURFACE WATER

**Point of Diversion and Means of Diversion:**

**Period of Use:**

**Place of Use:**

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**Remarks:**

THIS CLAIM WAS DISMISSED BY ORDER OF THE WATER COURT.

**POST DECREE  
ABSTRACT OF WATER RIGHT CLAIM  
DEARBORN RIVER  
BASIN 41U**

**Water Right Number:** 41U 120760-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Owners:** WILLIAM L MUSSER JR  
49 E 86TH ST  
NEW YORK, NY 10028 1060

**Priority Date:** DECEMBER 31, 1923

**Type of Historical Right:** USE

**Purpose (use):** STOCK

**Flow Rate:** A SPECIFIC FLOW RATE HAS NOT BEEN DECREED BECAUSE THIS USE CONSISTS OF STOCK DRINKING DIRECTLY FROM THE SOURCE, OR FROM A DITCH SYSTEM. THE FLOW RATE IS LIMITED TO THE MINIMUM AMOUNT HISTORICALLY NECESSARY TO SUSTAIN THIS PURPOSE.

**Volume:** THIS RIGHT INCLUDES THE AMOUNT OF WATER CONSUMPTIVELY USED FOR STOCK WATERING PURPOSES AT THE RATE OF 30 GALLONS PER DAY PER ANIMAL UNIT. ANIMAL UNITS SHALL BE BASED ON REASONABLE CARRYING CAPACITY AND HISTORICAL USE OF THE AREA SERVICED BY THIS WATER SOURCE.

**Source Name:** UNNAMED TRIBUTARY OF DEARBORN RIVER

**Source Type:** SURFACE WATER

**Point of Diversion and Means of Diversion:**

| <u>ID</u> | <u>Govt Lot</u> | <u>Qtr Sec</u> | <u>Sec</u> | <u>Twp</u> | <u>Rge</u> | <u>County</u>   |
|-----------|-----------------|----------------|------------|------------|------------|-----------------|
| 1         |                 | SWNE           | 32         | 18N        | 7W         | LEWIS AND CLARK |

**Period of Diversion:** JANUARY 1 TO DECEMBER 31

**Diversion Means:** LIVESTOCK DIRECT FROM SOURCE

**Period of Use:** JANUARY 1 TO DECEMBER 31

**Place of Use:**

| <u>ID</u> | <u>Acres</u> | <u>Govt Lot</u> | <u>Qtr Sec</u> | <u>Sec</u> | <u>Twp</u> | <u>Rge</u> | <u>County</u>   |
|-----------|--------------|-----------------|----------------|------------|------------|------------|-----------------|
| 1         |              |                 | SWNE           | 32         | 18N        | 7W         | LEWIS AND CLARK |

**POST DECREE  
ABSTRACT OF WATER RIGHT CLAIM  
DEARBORN RIVER  
BASIN 41U**

**Water Right Number:** 41U 120761-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Owners:** WILLIAM L MUSSER JR  
49 E 86TH ST  
NEW YORK, NY 10028 1060

**Priority Date:** DECEMBER 31, 1923

**Type of Historical Right:** USE

**Purpose (use):** STOCK

**Flow Rate:** A SPECIFIC FLOW RATE HAS NOT BEEN DECREED BECAUSE THIS USE CONSISTS OF STOCK DRINKING DIRECTLY FROM THE SOURCE, OR FROM A DITCH SYSTEM. THE FLOW RATE IS LIMITED TO THE MINIMUM AMOUNT HISTORICALLY NECESSARY TO SUSTAIN THIS PURPOSE.

**Volume:** THIS RIGHT INCLUDES THE AMOUNT OF WATER CONSUMPTIVELY USED FOR STOCK WATERING PURPOSES AT THE RATE OF 30 GALLONS PER DAY PER ANIMAL UNIT. ANIMAL UNITS SHALL BE BASED ON REASONABLE CARRYING CAPACITY AND HISTORICAL USE OF THE AREA SERVICED BY THIS WATER SOURCE.

**Source Name:** UNNAMED TRIBUTARY OF DEARBORN RIVER

**Source Type:** SURFACE WATER

**Point of Diversion and Means of Diversion:**

| <u>ID</u> | <u>Govt Lot</u> | <u>Qtr Sec</u> | <u>Sec</u> | <u>Twp</u> | <u>Rge</u> | <u>County</u>   |
|-----------|-----------------|----------------|------------|------------|------------|-----------------|
| 1         |                 | SWSE           | 28         | 18N        | 7W         | LEWIS AND CLARK |

**Period of Diversion:** JANUARY 1 TO DECEMBER 31

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|-----------|--------------|-----------------|----------------|------------|------------|------------|-----------------|
| 1         |              |                 | SWSE           | 28         | 18N        | 7W         | LEWIS AND CLARK |